

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PRO-TEC FIRE SERVICES, LTD.
Employer

and

Case 31-RC-133248

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 1-61
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

Dated, Washington, D.C., October 22, 2014

MARK GASTON PEARCE, CHAIRMAN

HARRY I. JOHNSON, III, MEMBER

NANCY SCHIFFER, MEMBER

¹ The Employer contends that the Fire Captains' job description and the testimony of Fire Chief John Scanlon and Fire Captain Marcus Domingo establish that the Fire Captains have the authority to responsibly direct and assign firefighters, including directing firefighters' response to emergencies. Member Johnson notes that independent judgment and discretion would reasonably be expected from Fire Captains in emergency situations. Nonetheless, he recognizes that assumptions based on the nature of emergency, fire, and rescue work cannot replace the specific evidence of independent judgment and discretion required under *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006). See, e.g., *Barstow Community Hospital*, 352 NLRB 1052, 1053 (2008) (evidence that was "devoid of any examples or details of circumstances" lacked sufficient specificity to show the employees exercised independent judgment), affirmed by 356 NLRB No. 15 (2010), enfd. 474 Fed.Appx. 497 (9th Cir. 2012) (unpublished opinion). Here, Member Johnson agrees that the Employer failed to meet its burden of establishing independent judgment and discretion where it provided no evidence that the Fire Captains, particularly in emergency situations, directed or assigned firefighters to areas of responsibility different from their predetermined responsibilities as set by the daily shift schedule, or otherwise exercised independent judgment or discretion in directing the firefighters' work.

Member Johnson also finds that the Fire Captains and firefighters share a community of interest under the Board's traditional community of interest analysis. He did not participate in *Macy's*, 361 NLRB No. 4 (2014), upon which the Regional Director relies, and finds no need here to express his opinion whether that case or the *Specialty Healthcare* decision upon which the *Macy's* majority relied were correctly decided. Finally, contrary to the Employer's assertions, Member Johnson notes that the California Civil Jury Instructions and Evidence Code are not relevant here.